

# **POLICY BRIEF**

## **No.2**

### **Critical gaps in the implementation of EU and selected Member States' policies on migrating from Asia to the European Union**

Asuncion Fresnoza-Flot\*

Sergio Carrera\*\*

Anjum Shabbir\*\*\*

\* Research Associate of Fonds National de la Recherche Scientifique (FNRS) & Senior Lecturer at the Laboratory of Anthropology of Contemporary Worlds (LAMC), Université libre de Bruxelles (ULB) | [asuncion.fresnoza@ulb.be](mailto:asuncion.fresnoza@ulb.be) | ORCID no. 0000-0002-4865-9686

\*\* Senior Research Fellow and Head of the Justice and Home Affairs Unit at the Centre for European Policy Studies (CEPS) | [sergio.carrera@ceps.eu](mailto:sergio.carrera@ceps.eu)

\*\*\* Researcher at Centre for European Policy Studies (CEPS) | [anjum.shabbir@ceps.eu](mailto:anjum.shabbir@ceps.eu)

**AspirE** – Asian prospects in (re)migration to/within the EU – is a three-year research project (2023-2025) that examines the decision making of aspiring (re)migrants from selected Southeast and East Asian countries (China, Japan, Philippines, Thailand and Vietnam) to and within selected EU member countries (Belgium, the Czech Republic, Finland, Germany, Italy and Portugal).

### **Consortium partners:**


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Vietnam Asia Pacific Economic Center (VAPEC), Vietnam

### **Collaborators:**

Centre for European Policy Studies (CEPS), Belgium: Sergio Carrera, Miriam Mir & Anjum Shabbir  
External Experts Advisory Board: Elisa Fornalé (World Trade Institute, Switzerland), James Farrer (Sophia University, Japan), Stefan Rother (University of Hamburg, Germany) & Sureeporn Punpuing (Mahidol University, Thailand)  
External Ethics Advisor: Roderick G. Galam (Oxford Brookes University)

### **Contact:**

Asuncion Fresnoza-Flot  
Laboratory of Anthropology of Contemporary Worlds (LAMC)  
Institute of Sociology, Université libre de Bruxelles  
Avenue Jeanne 44, 1050 Brussels, Belgium

 [aspire@ulb.be](mailto:aspire@ulb.be) | <https://aspire.ulb.be/>

 [https://twitter.com/AspirE\\_EU\\_Asia](https://twitter.com/AspirE_EU_Asia)

 <https://www.facebook.com/AspirE2023EUproject>

### **Authors:**

Asuncion Fresnoza-Flot, Sergio Carrera & Anjum Shabbir

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### **Editorial design:**

Asuncion Fresnoza-Flot & Catherine Gonzalez



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## EXECUTIVE SUMMARY

This Policy Brief stems from the analysis of the AspirE Project's country reports on selected EU Member States (Belgium, the Czech Republic, Finland, Germany, Italy, and Portugal) and Asian territory/countries (Hong Kong and mainland China, Japan, the Philippines, Thailand, and Vietnam). These reports examined policies covering labour migration, family reunification, student mobility, investment-related mobility, tourism, and free movement within the Schengen area. The reports highlight that non-EU nationals are categorised and framed in a hierarchical way in migration policies, and that their place in the hierarchy of non-EU nationals determines their rights and degree of institutional control they are subjected to during their applications for entry, residence, and/or circulation within the EU. The analysis reveals three critical gaps in the implementation of these policies.

First, there is a differential criteria applicable according to this constructed hierarchy of non-EU nationals, and amount of information (*quantitative gap*) required from them, but also differential information available in Member States' embassies/consulates regarding entry to and circulation conditions within the EU. Second, there is also a difference in the quality of information (*qualitative gap*) given concerning access to the Member States at their embassies and consulates, as well as on the Member States' application of the extension of Schengen visas in cases of *force majeure* and humanitarian reasons. Third, non-EU nationals at the bottom of the EU's designed hierarchy face particular difficulties because their rights are legally limited to a "temporary" status (*temporal gap*) after which a change of status is impossible or very difficult in practice. These three gaps constitute a form of arbitrary discrimination vis-à-vis some non-EU nationals and reflects the structural discrimination inherent to the EU's regular migration system.

To address these discriminatory gaps, this Policy Brief addresses three recommendations to the European Commission: to uphold the EU Treaty's principles of equal treatment and legal certainty; to ensure an independent evaluation model on how individual Member States implement visa policies from the perspective of these principles on the ground; and to work towards a more flexible framework for status-transition in EU migration law, including by encouraging all Member States to ratify the United Nations' Global Compact for Safe, Orderly and Regular Migration and other relevant international human rights and labour standards.

### **Keywords:**

*non-EU nationals, hierarchised categorisation, indirect and structural discrimination, different amounts and quality of administrative information, varying temporality of stay, legal status-transition, risk of irregularity*

## INTRODUCTION

The EU's regular migration system as reflected in its policies and legal frameworks, as well as that of the selected Member States' national policies and legal frameworks, have separated non-EU nationals into categories in a hierarchical way, mainly by nationality, professional status, social class, and level of wealth, in order to select and manage which prospective migrants and visitors enter EU's Schengen territory.

**This leads to critical gaps in the overall policy on people moving from Asia to Europe. Non-EU nationals are only able to enter an EU Member State depending on how “desirable” they are, and once living there, a sliding scale of rights in quantitative, qualitative, and temporal terms applies under that policy, because their place in the hierarchy determines the degree of institutional control they are subjected to.** Such gaps are tantamount to structural discrimination contrary to EU and international human rights law standards, including the EU's key principles of equal treatment and legal certainty.

Adopting the “humanising approach”<sup>1</sup> that the AspirE Project promotes<sup>2</sup>, this Policy Brief exposes how selected Member States **overlook the human dimension in the implementation of their respective mobility policies**. This dimension places the individual at the centre, which is often disregarded in practice. This is identifiable in critical gaps of the said implementation not only in the amount, quality and clarity, and type of information provided to, or the amount demanded from, some non-EU nationals at Member States' embassies and consulates, but also in the existence of an effective possibility to transition to another legal status.<sup>3</sup>

In the following section, this Brief<sup>4</sup> unveils its key findings, namely quantitative, qualitative, and temporal gaps in the policy implementation regarding people moving from certain Asian countries to the Member States that constitutes unjustified discrimination. Such gaps categorise and hierarchise some non-EU nationals based mainly on their origins and other prohibited grounds, which consequently determines their access to, movement within, level of rights, and duration of authorised stay in the EU Schengen area. The Policy Brief concludes with three policy recommendations on how to address the said critical gaps.

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<sup>1</sup> Fresnoza-Flot, A. 2024. Humanising research on migration decision-making: a situated framework [version 2; peer review: 1 approved, 2 approved with reservations]. *Open Research Europe*, 3:142. Available at: <<https://doi.org/10.12688/openreseurope.16483.2>>.

<sup>2</sup> This collaborative research, entitled “Decision making of aspiring (re)migrants to/within the EU: the case of labour market-leading migrations from Asia” and funded by Horizon Europe RIA n° 101095289, aims to map to what extent spatial mobility policies consider aspiring (re)migrants' behaviour, identify the micro- and meso-level drivers of mobility aspiration and/or intention, and determine the temporality of (non-)mobility decision-making: see <<https://aspire.ulb.be/>>.

<sup>3</sup> This corresponds with one of the key findings of the Schengen Evaluation and Monitoring Mechanism (SEMM) on EU visa policy presented a European Commission Non-Paper Annexed to the Council of the EU (2023), Outcome of the 2022 Schengen evaluations in the field of the common visa policy, 8504/1/23, Brussels. The Non-Paper highlights as deficiencies delays in granting appointments and processing of visa applications, a failure to provide good quality information regarding the visa procedure and serious accountability gaps by external service providers.

<sup>4</sup> This Policy Brief would not be solid without the insights and feedback from Paola Bonizzoni (Principal Investigator of the AspirE team at University of Milan - Unimi) and Fabio de Blasis (postdoctoral researcher in the AspirE team at Unimi). It is Unimi that coordinated AspirE's WP2 from January 2023 to January 2024.

## KEY FINDINGS

**Finding #1:** There are far more information requirements and other conditions to fulfil in the visa application process from some non-EU nationals compared to others. Less visa application information is also available for some, and more for others. The differential amount of information-requirements, availability of information, and selection criteria in Member States' embassies/consulates regarding entry to and circulation conditions within the EU represents the **quantitative gap in migration policy implementation**. This gap involves differences of treatment that are tantamount to unjustified discrimination under EU and international human rights standards.

The analysis of the policies of the six selected Member States with regard to the five selected Asian countries under the AspirE project revealed that there is a much higher burden on people from some non-EU countries compared to those from others.

First, **the aims of visa policies including Schengen visa policy clearly make it easier for persons with certain nationalities and from certain countries to enter EU territory in a discriminatory way that does not appear to be justified**. This observation is in line with a key finding that finds the same at the EU level for Schengen visas<sup>5</sup>. The so-called EU negative visa list's focus on some non-EU countries as legal entities homogenises their people either as nationals of visa-exempt countries or as nationals of non-exempt countries and territories. For example, people from mainland China, the Philippines, Thailand, and Vietnam need to comply with numerous conditions to obtain a short-term visa to go to an EU country. But their counterparts from Japan<sup>6</sup> and Hong Kong<sup>7</sup> do not need a visa at all.

There is a **higher burden and much more information demanded from those nationals who are required to have a visa** (as listed under EU law<sup>8</sup>) to enter a Member State, in contrast to those who are visa-exempt. For instance, Filipino nationals applying for a short-term visa face “many documentary requirements” and need to prove their “financial capacity” as well as “links or ties to the origin country to ensure” that they do “not overstay in the destination country”<sup>9</sup>. Unlike them, Japanese people can enter the EU countries in the Schengen zone without visa<sup>10</sup>. This difference between Filipinos whose country is economically developing and the Japanese whose country is economically wealthy reflects how a perceived risk for overstaying based on nationality can penalise

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<sup>5</sup> Shabbir A. 2024. *A critical appraisal of the EU's regular migration system. Objectifying, structurally discriminatory and not aligned with basic EU and international standards* (AspirE's Policy Brief, n° 1). Brussels: CEPS, p. 37. See also Carrera, S. & Shabbir, A. (2024). *Humanising EU migration policies. The transition of statuses in the EU regular and legal migration law*. Brussels: CEPS, p. 51. Available at: <<https://www.ceps.eu/ceps-publications/humanising-eu-migration-policy/>>.

<sup>6</sup> Hayakawa, M. & Liu-Farrer, G. 2024. *Aspiring migrants' behaviour in mobility policies: the case of Japan* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-japan>>.

<sup>7</sup> Ng, I., Kwan, C.-y. T. & Chen, X. 2024. *Aspiring migrants' behaviour in mobility policies: the case of Hong Kong and mainland China* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-hong-kong-and-mainland-china>>.

<sup>8</sup> Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018. *Official Journal of the European Union*, L303/39, 28 November 2018. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2018:303:FULL&from=ET>>.

<sup>9</sup> Asis, M. M. B., Garcia, B. A. V. & Tejada, E. V. 2024. *Aspiring migrants' behaviour in mobility policies: the case of the Philippines* (Country report). Brussels: AspirE, p. 28. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-philippines>>.

<sup>10</sup> See Hayakawa, M. & Liu-Farrer, G. 2024. *Aspiring migrants' behaviour in mobility policies: the case of Japan* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-japan>>.

visa applicants. As pointed out in our EU-level Policy Brief<sup>11</sup>, “Whilst differential treatment based on nationality has been interpreted to be permissible to States to regulate cross-border human mobilities internationally, there is a very thin and often overlapping line between nationality restrictions based on migration management goals and those related to, or indirectly impacting, the origins and other individual specificities of aspiring migrants”<sup>12</sup>. This process overlooks the human dimension because individuals from *certain* world regions and countries are “suspected of being irregular immigrants” or being “more of a risk for overstaying” in the EU.

Second, there is **less information available at the embassies and consulates of Member States in some of the Asian countries compared to others**. It is not that easy for individuals from some Asian countries to find out if they are exempt from Schengen visa requirements, as the information they are provided is limited. In many cases, information about the requirements that must be fulfilled to enter the EU are provided, but not other information in the original text of policies as regards the benefits a specific visa offers, and the penalties imposed in the case of overstaying or not complying with the immigration law of the destination country. This differential treatment results in unequal access to the six Member States under examination, and subsequently leads to a **highly stratified migration system**: with the nationals of visa-exempt countries becoming more internationally mobile than those of “undesirable” countries, and with the “desirable” nationals of a non-exempt country gaining more spatial mobility than their “undesirable” co-nationals.

Third, nationality is one of the most salient determinant categories of entry to and circulation within the EU’s Schengen area. **An individual national of a non-EU country exempt from visa requirement entails privilege, whereas that of an individual national from a non-EU country that does not have a visa exemption is treated with suspicion and mistrust**. The EU Visa List Regulation (EU) 2018/1806 appears to underpin the differential treatment of non-EU citizens when it comes to the amount of information made available for them as regards access to the EU, and why certain countries are chosen to be visa exempt or not. The treatment resulting from EU visa policy, and the increasing targeting of risk categories or statistical profiles of travellers in EU-level databases or so-called “smart borders”,<sup>13</sup> qualify in our view as **“indirect discrimination”**. When the human right to freedom of movement is constrained because of macro-level policies and regulations, it unveils **a critical gap to be treated urgently for a more human-sensitive approach to migration**.

**Finding #2: There is a gap in the quality of information given concerning access to the Member States at their embassies and consulates and the application of the criteria** for being granted a Schengen visa. This reinforces the EU’s and the five selected Member States’ hierarchisation of non-EU nationals, which further ties their access to freedom of movement with a certain level of privilege and undermines the predictability of the entire Schengen visa procedures.

Several country cases in AspirE’s analysis of EU mobility policy show a **discrepancy in the quality of information available at embassies and consulates in selected countries**. “Quality” refers here to how detailed or rich the information made available to non-EU nationals is regarding entry to and/or circulation within the EU.

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<sup>11</sup> See Shabbir, A. 2024. *A critical appraisal of the EU’s regular migration system. Objectifying, structurally discriminatory and not aligned with basic EU and international standards* (AspirE’s Policy Brief, no. 1). Brussels: CEPS.

<sup>12</sup> See section 3.5 on page 27 of the EU-level AspirE report: Carrera, S. & Shabbir, A. (2024). *Humanising EU migration policies. The transitioning of statuses in the EU regular and legal migration law*. Brussels: CEPS. Available at: <<https://www.ceps.eu/ceps-publications/humanising-eu-migration-policy/>>.

<sup>13</sup> Refer to Smart Borders - European Commission (europa.eu): <[https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/smart-borders\\_en](https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/smart-borders_en)>.

**A categorisation of aspiring migrants that grants differing levels of privilege occurs across various levels.** First, in favour of so-called “highly skilled migrants” who already have a privileged position within a non-EU country: for example, a Filipino national applying for a reunification visa to live with their *Italian* family member(s) in Italy has less requirements to satisfy than that of a fellow Filipino national seeking a reunification visa to join a *Filipino* relative(s) in Italy.<sup>14</sup>

Second, in favour of “highly skilled migrants” depending on the non-EU country they are from<sup>15</sup>: for example, aspiring highly skilled workers from Vietnam applying for an EU Blue Card in Germany need to meet several more conditions<sup>16</sup> than their Japanese counterparts who only need to satisfy three requirements, namely a “contract or binding job offer for the salary higher than 58,400 EUR per year, certificate of university graduation, and proof of travel health insurance”<sup>17</sup>.

Third, in favour of non-EU nationals who must have a visa and are from a group of “less suspected” countries, who are subject to less demanding requirements and conditions: at the level of non-EU nationals who must have a visa, **the requirements for a visa category of a Member State often vary from one country to another.** For instance, B1 level in German language is required for Thais applying for a German student visa<sup>18</sup>, whereas B2 level is demanded for Filipinos applying for the same visa.

And fourth, in favour of **non-EU nationals from visa-exempt countries: they are in a better position than non-EU nationals who must have a visa and who are therefore subject to a more demanding procedure.** The difference for people from Hong Kong compared to those of mainland China illustrates this point: for example, aspiring students of Hong Kong have fewer conditions to fulfil than aspiring students of China.<sup>19</sup> This situation is also remarkable across non-EU countries where students and investors are subject to a less demanding procedure compared to aspiring family members.

Furthermore, Article 33 of the EU Visa Code envisages that Member States **must extend Schengen visas to non-EU nationals who are already present on their territory and who are unable to leave before the expiry of his/her visa for reasons of *force majeure* and humanitarian reasons,** and *may* do so in relation to personal reasons. However, little is known as regards the exact ways in which Member States are actually applying these transitioning of status-provisions in a **harmonised fashion** across the Union, as well as the exact conditions and qualitative assessments

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<sup>14</sup> Asis, M. M. B., Garcia, B. A. V. & Tejada, E. V. 2024. *Aspiring migrants' behaviour in mobility policies: the case of the Philippines* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-philippines>>. See also Bonizzoni, P. & De Blasis, F. 2024. *Aspiring re-migrants' behaviour in mobility policies: the case of Italy* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-italy>>.

<sup>15</sup> See the results of AspirE's pan-EU level analysis: Shabbir A. 2024. *A critical appraisal of the EU's regular migration system. Objectifying, structurally discriminatory and not aligned with basic EU and international standards* (AspirE's Policy Brief, no. 1). Brussels: CEPS.

<sup>16</sup> See page 44 of this report: Dang, A. N., Nghiem, T. T., Nguyen, Q. T., Ho, N. C., Nguyen, T. L. & Khuat, D. L. 2024. *Aspiring migrants' behaviour in mobility policies: the case of the Vietnam* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-vietnam>>.

<sup>17</sup> See page 21 of this report: Hayakawa, M. & Liu-Farrer, G. 2024. *Aspiring migrants' behaviour in mobility policies: the case of Japan* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-japan>>.

<sup>18</sup> Jaisuekun, K. & Sunanta S. 2024. *Aspiring migrants' behaviour in mobility policies: the case of Thailand* (Country report). Brussels: AspirE. Available at: <https://aspire.ulb.be/impact/reports/mobility-policy-report-thailand>

<sup>19</sup> Ng, I., Kwan, C.-y. T. & Chen, X. 2024. *Aspiring migrants' behaviour in mobility policies: the case of Hong Kong and mainland China* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-hong-kong-and-mainland-china>>.

that are being carried out in practice depending on the country of origin of the Schengen visa holder.<sup>20</sup> This nurtures more legal uncertainty.

The differential treatment resulting from the privilege-based categorisation of certain non-EU nationals can be considered as a form of **structural discrimination embedded in the EU's migration policy system**, which (re)produces and reinforces the global hierarchies and inequalities among countries and their nationals along origins and social class lines. This situation leaves *some* individuals, notably the “suspected” nationals of non-EU countries who are undesired and presumed to be “irregular”, to strategise and to navigate a highly stratified, complex, and fragmented migration system for their mobility projects to come true. This policy disregards that it is actually covering human beings who ought to have agency over their lives irrespective of their origins, skin colour, and wealth status. It also nurtures irregularised migration. Although the discrepancy in the quality of information provided to non-EU nationals and the selection criteria for positive granting of visas at Member State embassies and consulates can be justified by Regulation (EU) 2018/1806, its real impact on aspiring non-EU migrants' lives makes it difficult to be fully objectified.

As nationality-based differential treatment often hides underlying racial and ethnic origins, the horizontal and vertical stratification of non-EU nationals aspiring to come to the EU is **against the EU's principle of “equal treatment”, and the Union's commitment under the EU anti-racism Action Plan 2020-2025.**<sup>21</sup> As Finding #1 of this Policy Briefs points out, the differential treatment of non-EU nationals in the EU migration system qualifies as prohibited discrimination under international human rights law and the EU Charter of Fundamental Rights.

**Finding #3:** Those individuals at the bottom of the EU's designed hierarchy face particular difficulties because **their rights are limited to a “temporary” status** after which a change of legal status is impossible or very difficult in practice. The **temporal gap** between the defined non-EU national categories in selected Member States increases the risk of them falling into irregularity and/or legal status-uncertainty – **a situation challenging the effectiveness of the EU's irregular immigration policies.**

AspirE's analysis of selected EU Member States' policies indicates that **only certain categories of non-EU nationals can easily transition from one legal status to another** without the risk of falling into an irregular status at some time in their immigration trajectory. This concerns so-called “highly skilled” or “qualified workers” (e.g., EU Blue Card Holders) and investment-related visa holders who are hyper wealthy individuals. **Different temporalities across privileged categories and across overall non-EU national categories are created** from the stratification of non-EU nationals as regards access to legal status-transition.

There is a **temporal gap among the privileged or slightly privileged categories.** They can change their initial legal status to another, but the statuses they can access allow differing durations of lawful stay: some are longer or more permanent than the initial status, while others are only a short period. For instance, non-EU nationals with temporary residence permit for self-employment in Germany can apply for a permanent residence permit only after three years instead of the usual five-year

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<sup>20</sup> The Commission's Visa Code Handbook does not actually clarify this crucial point and leaves enormous discretion to EU Member States in the practical hypothetical cases that are envisaged in page 127. See European Commission, Annex to the Commission Implementing Decision amending Commission Decision C(2010) 1620 final as regards the replacement of the Handbook for the processing of visa applications and the modification of issued visas (Visa Code Handbook I), C(2020) 395 final, 28.1.2020, Brussels, p. 127.

<sup>21</sup> European Commission. 2020. *Communication from the Commission to the European Parliament and the Council. A Union of equality: EU anti-racism action plan 2020-2025.* COM(2020) 565 final.



requirement<sup>22</sup>, whereas non-EU nationals with a visa issued for investment purposes in Belgium can only ask for a long-term residence status after five uninterrupted years of presence in the country<sup>23</sup>.

Likewise, a visa for the purpose of seeking employment related to their field of specialisation is offered to non-EU students in Germany for 18 months; whereas its equivalent in Belgium only allows non-EU national students to stay for 12 months after their studies. Such a temporal gap signifies that if they wish to stay longer or reside permanently in their receiving country, **less-privileged non-EU nationals are more at risk of legal status-uncertainty and falling into irregular or undocumented status after the expiration of the relevant permit, compared to their more-privileged counterparts.**

The comparison of six EU Member States in terms of implementation of their respective migration and mobility policies shows that **the temporal gap is particularly wide between non-EU short-stay visa holders and all the privileged non-EU national categories**, as the former have no access to legal status transition. Tourists can extend the duration of their visa only for exceptional purposes (humanitarian, serious personal, or important professional reasons), while others (such as seasonal workers) cannot do so.

**When legal status-transition is not allowed, these non-EU nationals can easily fall into irregularity.** A few EU Member States, such as Italy and Portugal, consider changing human behaviour in their mobility policies and allow irregular non-EU nationals (including those who were formerly short-stay visa holders) to access ad-hoc, selective regularisation schemes (such as for “essential” workers in specific economic sectors or those based on family reasons) that provide temporary permits, after which non-EU nationals may again fall into an irregular status.

Not recognising the changing behaviour and situation of all non-EU nationals regardless of their differing legal statuses jeopardises Member States’ policies on irregular immigration. It also **compromises the EU’s policy objectives to manage irregularised migration** and reduce the number of non-EU nationals in an irregularised situation. Since it causes more irregularity and does not offer a solution to (prospective) legal uncertainty for less-privileged and not-at-all privileged non-EU nationals, enabling legal status-transition should be rethought and considered as an overall policy approach and strategy.

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<sup>22</sup> Tkotzyk, V. 2024. *Aspiring re-migrants’ behaviour in mobility policies: the case of Germany* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-germany>>.

<sup>23</sup> Monteil, L., Fresnoza-Flot, A., Frangville, V. & Chaperon, M. 2024. *Aspiring re-migrants’ behaviour in mobility policies: the case of Belgium* (Country report). Brussels: AspirE. Available at: <<https://aspire.ulb.be/impact/reports/mobility-policy-report-belgium>>.

## POLICY RECOMMENDATIONS

**Recommendation #1:** The quantitative gap in the information regarding access to the EU provided to non-EU nationals in EU Member States' embassies and consulates should be addressed by a **reinforced upholding of the EU's principles of equal treatment (non-discrimination) and legal certainty**. To attain uniform and harmonious application of the EU Visa Code on the ground, the Commission should further enforce compliance with the EU's general principles and international standards in accordance with the EU Charter of Fundamental Rights. The Schengen Evaluation and Monitoring Mechanism (SEMM) should ensure a more robust and detailed examination of the compliance of EU visa policy implementation with fundamental rights, including non-discrimination. Where the SEMM has found persistent deficiencies in the daily implementation of the EU Visa Code, the European Commission should launch timely infringement proceedings against relevant EU Member States. As recognised by the Commission, these persistent deficiencies have a profound impact on "how the EU is perceived by third country nationals", which "is clearly not positive"<sup>24</sup>. The Commission should update the guidance provided by the EU Visa Handbook regarding this matter to uphold Member States' compliance with these principles and ensure a consistent and harmonious application of the safeguards and rights of visa applicants and holders in practice. Furthermore, the EU should change its visa policy so that it is not misused as a bargaining chip in its broader external relations with third countries for purposes related to EU readmission policy.

**Recommendation #2:** There should be an **evaluation carried out independently of the European Commission on how individual Member States implement visa policies on the ground** to address the qualitative gap in the information provided to non-EU nationals in Member States' embassies and consulates regarding access to the EU, as well as the use of the Visa Code provisions covering the need to extend Schengen visas in cases of *force majeure*, humanitarian, and personal reasons. This evaluation should focus on studying any discriminatory treatments and unjustified barriers to non-EU nationals intending to access specific visa types, the role by external service providers, their relationship and interconnections with new and forthcoming EU large-scale databases and information sharing systems, as well as any misapplication of these policies in light of the prohibition of arbitrary discrimination based on prohibited grounds. Its results should inform policymaking at the EU level on how to further harmonise the ways in which EU visa policy is implemented on the ground (*law in action*) with policy or legal texts (*law in books*). Concretely, the Commission should promote further harmonisation by suggesting to the European Parliament to organise dialogues among relevant Member State-representatives and practitioners as well as civil society actors to assess that Member States provide the same information and treatment to all non-EU nationals regardless of their origins or other risk or statistical profiles amounting to arbitrary discrimination.

**Recommendation #3:** To fill the temporal gap in EU mobility policy implementation on non-EU countries, the European Commission should **call for a more flexible status transition for third country nationals in EU migration law and encourage all EU Member States to ratify the United Nations' Global Compact for Safe, Orderly and Regular Migration (GCM) as well as other relevant international human rights and labour standards instruments**. Specifically, the

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<sup>24</sup> Refer to footnote 3 above on the outcome of the 2022 Schengen evaluations in the field of the common visa policy.

EU should play an active role in promoting the GCM's proposed actions to "address and reduce vulnerabilities in migration" (Objective 7), notably regarding legal status transition: "Develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination, to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion"<sup>25</sup>. In this context, as a way of illustration, non-EU students should be given meaningful time to access their receiving country's labour market, whereas non-EU seasonal workers should be given the possibility to legally transition statuses without leaving the EU and be granted equal rights with other third country workers in the Union. This action considers non-EU nationals' changing behaviour and life circumstances, and if applied on the ground, it could prevent them from falling into irregularity and/or undocumented status.

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<sup>25</sup> For details, see the complete text of the Global Compact on the UN's website: <<https://documents.un.org/doc/undoc/gen/n18/451/99/pdf/n1845199.pdf?token=bmropo6eQQRPeQuzfj&fe=true>>.